

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1352

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p/s

IN THE
UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA
Plaintiff-Appellee

vs.

DONALD RICHARD BRANT

Defendant-Appellant

CRIMINAL NO.

75-16

Appeal From The United States District Court
For The District Of Vermont

APPENDIX

ALDEN T. BRYAN, ESQ.

Attorney for Appellant

192 College Street
Burlington, Vermont 05401

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States)	Criminal Action
)	
vs.)	No. 75-16
)	
Donald Richard Brant and)	
Kevin Richard Dailey)	

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UNITED STATES DISTRICT COURT
FOR THE
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United States)	Criminal Action
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United States of America vs.

SEP 23 1975

United States District Court for

Donald Richard Brant

DISTRICT OF VERMONT

DEFENDANT

DOCKET NO.

75-16

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH

9

DAY

22

YEAR

75

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Alden T. Bryan, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **violation of Title 18, United States Code, Sections 371, 2113(a) and 2113(d).**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **three**

years as to Count I. Defendant committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of twenty years as to Count II. The sentences as to Counts I and II are to run consecutively with each other.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revocation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY OF

Filed **Sept. 22, 1975**

THIS DATE **September 22, 1975**

BY **Armin R. Curran**

() CLERK

(x) DEPUTY

Date **September 22, 1975**

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

VS

DONALD RICHARD BRANT

CRIMINAL NO. 75-16

MOTION FOR NEW TRIAL

NOW COMES the defendant, DONALD RICHARD BRANT, by and through his attorney, Alden T. Bryan, and moves the Honorable Court to grant him a new trial based upon the following grounds:

1. The verdict is contrary to the weight of the evidence.
2. The verdict is not supported by substantial evidence.
3. The Court committed error in denying defendant's Motion for Acquittal made at the conclusion of the Government's case and at the conclusion of all of the evidence.
4. The Court committed error in failing to charge the jury in the manner requested by the defendant.
5. The Court committed error in denying defendant's motion for mistrial as requested.
6. The Court committed error in allowing the Government to introduce evidence of prior criminal act in the State of New Hampshire, which error resulted in substantial prejudice to the defendant.
7. The defendant's rights were substantially prejudiced because his counsel received no notice from the Government prior to trial that evidence of prior criminal acts in New Hampshire would be introduced, with the result that his counsel was completely unprepared to defend against such evidence during the course of the trial.
8. Inasmuch as the jury was not sequestered during the course of the trial, and on Wednesday, May 28, the article in the Burlington Free Press attached hereto as Exhibit A was published, the defendant requests the Court to investigate whether any members of the jury read the article, and if so,

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to grant a new trial on the grounds that reference to indictment for murder as set forth in the article constituted extreme prejudice to the defendant, making a new trial mandatory.

Dated at Burlington, County of Chittenden and State of Vermont this 30th day of May, 1975.

DONALD RICHARD BRANT

By /s/ Alden T. Bryan
Alden T. Bryan, Esq.
Hoff, Curtis, Bryan, Quinn & Jenkins

CERTIFICATE OF SERVICE

I, Alden T. Bryan, a member of the firm of Hoff, Curtis, Bryan, Quinn & Jenkins, 192 College Street, Burlington, Vermont, attorney for defendant, certify and say that I did serve a copy of the foregoing Motion for New Trial on Hon. George F. W. Cook, United States Attorney, Rutland, Vermont 05701, attorney for the United States of America, by placing a copy of same in an envelope, properly addressed and prepaid, and by placing said envelope in the United States mail for delivery.

/s/ Alden T. Bryan
Alden T. Bryan

The Burlington Free Press

Burlington, Vermont, On Beautiful Lake Champlain

WEDNESDAY, MAY 28, 1975

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Bank Robbery Trial Arguments End; Jury To Begin Deliberations Today

By IRENE WIELAWSKI

The prosecution and defense rested their cases Tuesday in the trial of Donald Richard Brant, who is accused of robbing the Chittenden Trust Co. branch bank on Shelburne Road in South Burlington at gunpoint in April 1974.

Attorneys completed final arguments to the jury late Tuesday afternoon in U.S. District Court here and jurors will begin their deliberations this morning.

Brant, 34, of Pawtucket, R.I., and Kevin Richard Dailey, 26, of Marshfield, Mass., were indicted by a federal grand jury and charged with conspiracy and with robbing two employees of the bank branch of \$4,350 in daylight April 11, 1974.

The lawyers' arguments Monday focused on the credibility of James E. Gardner, 45, of Providence, R.I., who said he was a third participant in the robbery and whose testimony throughout the five-day trial was central to the case against Brant.

Gardner was granted immunity by U.S. Atty. George W.F. Cook in exchange for his testimony on the robbery here in April and about a previous attempt to rob the same bank in December 1973.

Gardner said he, Brant and Dailey stole a car early April 11, transferred weapons, plastic masks and hats resembling baseball caps from Brant's car to the stolen vehicle and drove to the bank branch. There, he said, they awaited the arrival of couriers carrying money for the bank and held up employees Mark Ashley and Richard E. Goss, relieving them of \$4,350 at about 9:30 a.m.

In testimony regarding the previous attempt to rob the bank in which he said he and Brant were involved, Gardner said one Alfred Bishop also participated. It was later shown that Bishop was in jail at the time he was to have been staking out the bank.

Defense attorney Alden Bryan of Burlington argued that Gardner's testimony regarding Bishop was not a lapse of memory, as the prosecution portrayed it, but rather was "premediated perjury." Bryan said Gardner had made deals with the government regarding his testimony and that Gardner was trying to "plug" Brant into another's role in the robbery. He said without

Gardner, the prosecution had only circumstantial evidence and could not prove Brant was involved.

"The tracks have got to lead somewhere. They can't just be a bunch of tracks," said Bryan about the government's evidence.

Prosecutor Cook acknowledged Gardner erred in his testimony regarding Bishop but cited other testimony by Gardner that was corroborated by several witnesses called by Cook. Cook said of Gardner, "He is a totally worthless individual but in a bank robbery, the government must take the witnesses it gets." Gardner is serving an 18-year sentence for murder and another bank robbery.

Cook reviewed the evidence of the trial, portraying Brant as the central organizer of the actual robbery, which the prosecutor said entailed meticulous planning. Cook focused on an apparently unique type of sawed-off shotgun that witnesses said looked like the one the robber used and that was found in Brant's car two months after the robbery.

Later, in the prosecution's rebuttal after Bryan spoke, Asst. U.S. Atty. William B. Gray again focused on Gardner's testimony regarding Bishop. Gray argued that Gardner could not have been trying to please the government by lying deliberately about Bishop, because such testimony could so easily be proven wrong (by showing that Bishop was in jail at the time of the robbery). Rather than pleasing the prosecutors, said Gray, Gardner's testimony about Bishop made them "mad as hornets."

Brant has been indicted on charges of murdering two persons whose bodies were found in a swamp in Ledyard, Conn., according to the Associated Press. He attempted to escape from the Burlington Community Correctional Center Sunday night after overpowering a guard and taking his keys. After several minutes of liberty, however, he was recaptured by police at College Street and South Winooski Avenue.

Presiding federal Judge Albert W. Coffrin will give jurors his instructions at 9:30 a.m. today before they return to deliberate.

A. It is on Shelburne Road in the shopping center.

Q That goes down to the Village of Shelburne?

A. Yes, sir.

Q The main road south, is it not?

A. That is Route 7.

Q Now when you made delivery, I will say before April 11th, is there a certain person who helped you when you got down to the branch office at the Chittenden Trust on Shelburne Road?

A. Yes, sir.

Q Who was that person?

A. The person was Mark Ashley.

Q Was he also an employee of the Chittenden Trust Company?

A. At that time, he was Assistant Manager of the Shelburne Road Branch.

Q On April 11th, both of you were employees of the Chittenden Trust Company?

A. Yes, sir.

Q Can you, just in your own words, tell me what happened as soon as you drove into the bank? Tell us where your car was located, what you did when you got out of your car, and what happened.

A. I pulled into the drive-in area on the south side, and my car was headed east. I had the trunk of the car approximately in line with the doorway of the bank. I got

out of my car, went to the door and rapped on the door; Mark Ashley came, and he came to the door, and he went over towards the Grandway, I mean.

Q You say "Grandway" or Gaines?

A. Yes.

Q What are Grandway and Gaines?

A. Shopping center discount stores. He went over there after a shopping cart and came on back, and then we started unloading the vehicle.

Q That was unloading from your trunk?

A. Unloaded from the trunk of my car.

Q How does the trunk open?

A. The trunk opens with a key.

Q Does it go up or down?

A. It goes up.

Q Go ahead and tell us what happened as you were unloading the money.

A. First, there was another vehicle pulled up and the person asked if the bank was open to cash a check, and Mark Ashley said, "No". Then just a little bit after that, another car came to a screeching halt in back of us.

Q Can you describe that car at all?

A. The car that pulled up behind us?

Q Yes, that came to a screeching halt.

A. All I know it was a green one.

A. The other was a caliber .45 military style automatic.

Q And, did you notice anything else about that other than it was a .45?

A. No, I didn't.

Q Did you have occasion to notice anything about a third gun?

A. Well, I had another gun stuck into my back. It felt like a .38. I did not see it.

Q This gun that was stuck in your back was done by someone other than the person holding the sawed off shotgun or the one holding the .45?

A. Yes, sir.

Q Now how many bank robbers got out of the car altogether?

A. Three.

Q Now just go ahead and tell me after they got out, you have described the guns, you have described their masks, do you know if they were wearing gloves?

A. No, I don't.

Q Would you describe what happened?

A. When they got out of the car, I started swinging out of the trunk. I was going to close it, and they told us to put our hands over our heads and get into the trunk, and they bent me over the trunk of my car with my head down.

Q Was anybody frisked?

A. I was frisked, and I had a yellow parka on at the time,

and they tore the zipper on that frisking me, and the one frisking me kept on saying, "You have got to have a weapon; you have got to have a weapon".

Q Please go ahead as chronologically as possible and tell us what happened.

A. They started to load the money in their car. They were quite disappointed it was all change, no currency.

Q When you say "disappointed," is that something you determined because of what they said?

A. They said, "All it is is change".

Q Now you said earlier that when you left from the main Chittenden Trust building to go to the branch office, you had about \$7,000?

A. Yes, sir.

Q Just go ahead and complete what happened at the scene.

A. They didn't find no currency in the shopping cart and one started rummaging through the trunk of my car.

Q When you say "currency," you mean dollar bills?

A. Yes, sir.

Q Not coins?

A. Not coins; currency.

Q Go ahead.

A. They found a bag of currency in the trunk of my car with \$3,000 in it.

Q You know that bag had \$3,000 in it?

A. Assistant Manager at the branch at the time.

Q And, you did lie down, I take it, in front of the door?

A. Yes, we did.

Q What else can you tell us while the robbers were still at the scene? What else happened?

A. When they couldn't get in, they had us lie in front of the door and told us to say right there, and they got in their car and took off.

Q From the time they actually--I think you described it as "screeching wheels" behind you until the time they took off, about how long did that take?

A. It seemed like an eternity, but I imagine it only took just a couple minutes.

Q What did you do after they took off?

A. I got up, closed the trunk of my car, and I seen which way they went, and I took off after them.

Q How far did you go?

A. I went down to the road right in back of the Chittenden Trust there.

Q It is true, is it not, that Shelburne Road you have described, that runs north and south?

A. Right, sir.

Q And, what side of the road is the Chittenden Trust Company on, the east or west side?

A. It is on the east side.

THE COURT. We'll let him finish his question.

Q (By Mr. Cook) About how tall was the person with the shotgun?

A. Well, he was the taller of the three; my husband thought around six foot.

Q Tell me what you think, or don't you know?

A. I won't say exactly how tall he was, but he must have been six foot or close to it.

MR. COOK. Would you have Mr. Brant stand up please?

THE COURT. Mr. Brant. (The defendant stood up)

Q (By Mr. Cook) In reference to Mr. Brant, how tall was the person with the shotgun, shorter, taller, or about the same? Can you say, or aren't you sure?

A. I wouldn't want to say he was taller than this fellow.

Q Are you sure he was shorter?

A. Maybe he appeared taller to me, but I know the guy with the gun was the taller of the three. I can't be accurate on height.

THE COURT. Anything further, Mr. Bryan?

MR. BRYAN. Nothing further, your Honor.

THE COURT. Thank you, Mrs. Martin. Ladies and Gentlemen, we'll take our evening recess at this time and we'll resume in the morning at 9:30. Please remember not to discuss the case among yourselves, or members of

your family, or read anything about it, or listen to anything about it, or hear anything about it. The test you should apply as far as your conduct is concerned is that in the morning you can come into court and I can ask any one or all of you, individually, whether or not you followed my instructions and whether or not you discussed the case with anybody, or read about it, or listened to it, you can answer me honestly you have not. We'll see you in the morning at 9:30. I will stay on the bench, and you may leave now.

(The Jury left the courtroom at 4:40 p.m.)

THE COURT. Mr. Bryan, the Government has filed its memorandum with reference to admissibility of prior similar acts. I assume you have received a copy?

MR. BRYAN. Yes, your Honor. I have not read it.

THE COURT. I suggest you read it, and if you wish to file a memorandum on that, you do so in the morning.

MR. BRYAN. All right.

THE COURT. I want to ask both sides as to when they expect to file requests to charge in this matter?

MR. GRAY. Speaking for the Government, we have prepared requests to charge. I could give them to the Court and counsel right now, as long as the Court permits us to alter or amend a few of them. I haven't had a chance to proof read them since dictated and prepared, but they will give the Court an opportunity to look at them tonight.

we will stand in recess.

(Court recessed 4:45 p.m.)

(May 21, 1975; 9:30 a.m. in chambers)

THE COURT. I got you in because I have read the memorandum of the Government with reference to the testimony with respect to the bank robberies in the State of New Hampshire, and also I have read Mr. Bryan's memorandum. I am a little mystified, quite frankly, by the Government's memorandum that states in conclusion that the reason that we should admit the evidence of a similar bank robbery in New Hampshire is to prevent a miscarriage of justice should the witness Brant seek to discredit the witness Gardner as to this bank robbery.

MR. GRAY. That is not the only one, although it is clear from Mr. Bryan's opening statement he intends to paint Gardner.

THE COURT. I think he made it abundantly clear he was attacking the reliability of Mr. Gardner and hoped to establish convincingly he is not worthy of belief.

MR. GRAY. Perhaps it is best to outline a little of the proof with respect to the New Hampshire transaction.

MR. COOK. I can do that, generally, your Honor. The proof of the New Hampshire transaction would be that this was another bank robbery which proceeded the bank

nals, and the fact some of them are the same, and I think that would be corroborated; I believe it would be in New Hampshire. Certainly, it would be Gardner's testimony.

THE COURT. What do you mean "New Hampshire"? I don't know I follow you there.

MR. COOK. Well, I think--I can't--I think we will have two witnesses from the bank who will testify that a person resembling Brant had the sawed off shotgun, was giving the orders in the lobby, and that will be the same type of crime, the same M.O. which occurred, according to Gardner's testimony, down at the Chittenden Trust Company, and I am sure there are a few other matters that were performed quite similarly, and we think the inference the Jury would draw through witnesses from New Hampshire, who definitely pin Gardner and Brant together just before the robbery, that the similarity of the acts over there is probative of the fact that the same people committed the acts in Vermont. We offer that as affirmative proof, as well as proof of Gardner's credibility.

THE COURT. Mr. Bryan.

MR. BRYAN. Well, in addition to what I have stated in my memorandum, on the basis of what Mr. Cook and Mr. Gray have just said, I see no interconnection whatsoever between these two crimes, even assuming for a minute---

THE COURT. What do you mean, "interconnection"?

MR. BRYAN. There is no part of the New Hamp-

crucial testimony is the testimony of the independent person who saw Brant, under the name "Sherman", and Gardner together minutes before the bank robbery. That alone would be admissible even if the bank robbery weren't part of it just to show Brant and Gardner did know each other and were seen together at other times.

MR. BRYAN. This is in New Hampshire?

MR. GRAY. Yes.

THE COURT. Prior to the bank robbery?

MR. GRAY. Prior.

THE COURT. I don't understand there is any claim by Mr. Brant he didn't know Mr. Gardner.

MR. GRAY. I don't know. We don't know.

THE COURT. I don't either, obviously.

MR. GRAY. And, I might also say that bank robbery was selected, frankly, among how many, six or seven other potential bank robberies in the Eastern United States in which Gardner and Brant were involved together, according to Gardner, and we didn't want to get into the situation where we were trying to prove numerous additional ones. We limited our offer of proof to this one because we thought it was clear and concise and didn't mean enlarging the scope of this trial significantly. At the most, it would mean three or four other witnesses.

THE COURT. At what point do you intend to

introduce this testimony? Is it part of your case-in-chief in anticipation of what Mr. Brant may seek to establish?

MR. GRAY. I think we already know from Mr. Bryan's opening statement he will attempt to establish that he had nothing to do with this bank robbery, and, as such, we feel the issue is focused sufficiently for bringing in a prior similar act.

THE COURT. Do you make any claim this is a similar act to establish a pattern of conduct. modus operandi to this case?

MR. GRAY. Yes, we do claim it is a prior similar act of virtually identical modus operandi. Two of the persons are the same personnel, and the other two persons were persons who Gardner will testify were originally supposed to be part of the Vermont bank robbery, but who backed out, thus, establishing that aspect of the scheme.

THE COURT. Have you read that case?

MR. BRYAN. No, I missed that one.

THE COURT. Isn't that substantially similar to the situation we have here?

MR. BRYAN. It is more similar except one of the historically relevant elements on the question of intent was different in this case than in the bank robbery.

THE COURT. In what regard?

MR. BRYAN. The intent there was a robbery

where, apparently, there was a pattern by this one fellow in numerous instances to use a gun in a certain way, or fake the use of a simulated gun. I think the question was intent. It seems to me the way this case seems to unfold, the Government's proof of intent in the case, apparently, for the holdup purpose is putting the fellow in fear and so forth is a major element in that case where we don't have a similar element here.

MR. GRAY. Intent is one of the issues here that we must establish that he participated in with intent to do the act.

THE COURT. Well, anything further you want to say, Mr. Bryan?

MR. BRYAN. Your Honor, I think in this particular case where Mr. Brant is under indictment in New Hampshire---

THE COURT. He is?

MR. BRYAN. Yes, for the same dog gone crime.

THE COURT. The one in which the Government seeks to establish?

MR. BRYAN. Right, and it puts me in a really intolerable position of trying to defend a New Hampshire bank robbery on a notice like this which will have a detrimental effect on his case over in New Hampshire.

THE COURT. Why?

MR. BRYAN. Evidence is coming in here, things

that are said here. I can't be competent counsel with respect to the New Hampshire robbery. I just feel maybe I completely fail to understand the movement of criminal law, but if this can happen to a fellow, I don't see any stopping proof against a defendant when, without notice, any right to confront the witnesses against you in advance, be thrown into a second bank robbery which was very serious. You can just pyramid these things all around.

THE COURT. I would think this would be very helpful to Mr. Brant to have available this sort of a discovery manner what the evidence would be against him in the New Hampshire proceeding.

MR. BBRYAN. In effect, what they are doing is getting a conviction by use of the New Hampshire testimony apparently the same in Vermont as it is in New Hampshire. So what they are using is the New Hampshire robbery to convict him here in Vermont and effectively deprive him of a defense. Why not just say, "throw out the Vermont robbery and try him on the New Hampshire robbery and not give him a defense". It seems to be to be intolerable; unfair.

MR. GRAY. If I may respond. Mr. Brant can take each one of his bank robberies and segment them and totally isolate them from each of the others and in each instance he can argue there is a possibility of reasonable doubt with respect to each one, but a theory is when you compound the

circumstances and look at the whole line and look at all the corners in each and every instance makes that much more likely justice is being done, or the truth is being told with respect to the bank robbery on trial. That is the theory of similar act cases, and we argue this is almost a classic example for the admissibility of a prior similar act.

MR. BRYAN. If you can charge him with a series of acts---

THE COURT. You can't charge him here for New Hampshire.

MR. BRYAN. They come along and say as part of this indictment is a part of a series of acts so counsel can be prepared and know what is going on, at least we know we are being charged with a series of acts.

MR. GRAY. With respect to Mr. Brant and Mr. Gardner, there is a scheme, or two schemes, but with other defendants in the case you have a problem about whether this is one conspiracy or two conspiracies and other defendants over in New Hampshire and Vermont would be very upset about an over-all conclusive conspiracy count which was brought in with occasional participants along with the chronic participants.

MR. BRYAN. Not with respect to Brant; charge a series of conduct on his part.

THE COURT. We'll let the Government go into proof. I think it pretty much follows along with the Johnson

tradition. I really don't think it is placing Mr. Brant at a disadvantage because I don't think, in effect, he is being forced in any respect to try the New Hampshire case over here, and as a matter of fact, I think if he has a subsequent trial in New Hampshire, he may learn or ascertain something here that may be very helpful to his trial over there.

MR. BBRYAN. I would like to move for a continuance for two weeks to be prepared.

THE COURT. You may move, and your request for a continuance is denied.

MR. GRAY. The two young women on the stand yesterday, Mrs. Godin and Miss Sheridan, returned here this morning, and, frankly, they advised somebody from our office--not either one of us--they had additional information they thought was relevant. We talked to them and do believe it is relevant. They won't take more than five minutes apiece, and we would like to put them back on the stand for that purpose.

THE COURT. This is nothing contained in thirty-five hundred material?

MR. GRAY. No, there is none.

THE COURT. We'll permit you.

MR. BRYAN. Again, I would like advance notice of what this is all about.

MR. GRAY. There is no requirement on that.

MR. BRYAN. I would like for the record to

If the Court requires us to go ahead and defend against evidence of that sort, we respectfully ask and move for a mistrial on that basis.

Third, we believe the bank robbery in New Hampshire and the evidence thereof to be used in this case is not the same one as Mr. Brant has had knowledge of by his pleadings over there. He knows nothing of it. This makes the matter that much more difficult to defend against, and further, Mr. Brant would like a hearing out of the hearing of the Jury for him to present factual testimony that the facts as opposed to the law we have been discussing earlier this morning, but the facts of the New Hampshire robbery as compared with the facts here do not justify this evidence of prior criminal testimony. He would like a hearing on that to make sure the record contains all of the actual testimony. We feel the Government should be required to show, out of the hearing of the Jury and by witnesses' testimony, that the testimony will justify the use of this prior criminal activity. We feel that it is so prejudicial that the Court should have the benefit of all witnesses' testimony before making a decision on this point and would like to have F.B.I. testimony, any relevant testimony these two acts come within the cases to justify such prejudicial testimony as prior criminal activity, and to prove the case we are involved in now.

THE COURT. Mr. Cook or Mr. Gray, do you wish

A. Six-four.

Q In your stocking feet or with your shoes on?

A. That is in my stocking feet.

MR. BRYAN. Your Honor, we are not suggesting Mr. Curran was present at the scene in any way.

Q (By Mr. Gray) Mr. Curran, directing your attention to April 11, 1974, were you on duty that day?

A. Yes, I was.

Q Did you have occasion that day to participate in an investigation of a bank robbery which occurred at the Shelburne Road Office of the Chittenden Trust Company?

A. Yes, I did.

Q Do you recall approximately what time you arrived at the scene?

A. Well, I would say around 9:40-9:45.

Q Did there come a time while you were there that you and other law enforcement officers received word that a car had been located?

A. That is correct.

Q Was that a radio call from another police officer?

A. Yes, it was.

Q Did you proceed to the car that had been located?

A. Yes, I did.

Q Would you tell us where that car was located please?

A. I located the car in front of 140 Ferguson Street,

Burlington, Vermont.

Q Could you describe that car to us, please?

A. A 1973 Ford LTD, a green bottom with a white vinyl top, four-door.

Q Was it bearing license plates?

A. Yes, it did.

Q Do you recall what number it bore?

A. It was a Vermont plate, N-7218.

Q Now, was there anything unusual about that car that you noticed then you arrived?

A. Yes, the car was still running.

Q I think you may have told us, did you tell us where you located the car?

A. Yes, parked in front of 140 Ferguson Avenue.

Q Was it parked beside the road?

A. Yes, pulled up to the curb, but at that time there was quite a bit of snow, say a couple of feet at least, so it was as close to the curb as could be normally parked.

Q Were the doors locked or unlocked?

A. The doors were unlocked.

Q Were the doors open or closed?

A. They were closed.

Q Did you examine that car and its contents?

A. Yes, I did.

Q Directing your attention first to the outside, did you

Q Did you, at that time, or together with other law enforcement officers remove a number of items from the car?

A. Yes, I did.

Q MR. GRAY. May I approach the witness, your Honor?

THE COURT. Yes.

Q (By Mr. Gray) Agent Curran, I show you first what has been marked for identification, Government's Exhibit "2" for identification, and I ask you if you have seen that item before? (Handed to the witness)

A. Yes, I have.

Q And would you tell us where you saw it, please?

A. Yes. This item was recovered from the vehicle I had just been talking about, on April 11, 1974.

Q And I show you Government's Exhibit "3" for identification, a hat, and would you tell us if you can identify that also?

A. Yes, I can.

Q Was that also removed from the vehicle?

A. Yes, it was.

Q Do you recall wherein the vehicle they were located?

A. Yes, I made a note on the tag I attached to them when I removed them from the vehicle, and the hat was recovered from the rear floor; the mask was recovered from the front seat. It had actually fallen down on the side of the front side on the passenger's side.

Q I show you what has been marked, premarked Government's Exhibits "6," "7," and "8" for identification. Do you recognize those articles?

A. Yes, I do.

Q Starting first please with item Government's Exhibit "6," would you tell us, did you find that in the car?

A. Yes, I did.

Q And, can you tell us where you found it?

A. It was on the front seat.

Q Just so the record is clear, that is a laundry type bag?

A. Yes, it is.

Q Now how about the screwdriver contained in the plastic envelope marked Government's Exhibit "7", did you find that in the car?

A. Yes, I did.

Q Where did you find that?

A. This was in the ashtray in the front seat.

Q Just so it is clear to the Jury, of course when you found these items, the tags were not on them?

A. That is correct.

Q And with respect to the screwdriver, it was not, at that time, contained in the plastic bag, is that correct?

A. That is correct.

Q Directing your attention to item "8", will you tell us where you found that item please?

THE COURT. Before the Marshal gets the witness, I think we ought to discuss how Mr. Gardner -- I think what we should do, we'll get him in, and I will mention to him the points concerning his testimony and caution him that he should be responsive to the questions that are asked. Then I think probably the way that we will handle it is we'll excuse him and we'll have him brought back in whatever manner the Marshal will bring him into the courtroom. At this time, he will be sworn so he does not appear to be treated any differently than any other witness in the case. Does that meet with your approval, Mr. Bryan?

MR. BRYAN. I believe so, your Honor. Just a second. (Mr. Bryan conferred with Mr. Brant.) Your Honor, Mr. Brant wisely brought to my attention perhaps now is the time to put a rather broad form of objection on the record to any testimony from Mr. Gardner concerning the New Hampshire matters, and with the Court's permission, it would save me from bobbing up and objecting at every question and unnecessarily disrupting the proceedings, if I can have a continuing objection.

THE COURT. I think you adequately covered that through your previous motions, Mr. Bryan, but we will note your objection to testimony of Mr. Gardner with reference to the New Hampshire bank robbery.

bring in the jury, Mr. Marshal.

(Mr. Gardner was taken from the courtroom,
and the jury entered the courtroom at 2:00 p.m.)

THE COURT. Mr. Cook, call your next witness.

MR. COOK. We call witness James Gardner.

(Mr. Gardner was brought into the courtroom
by the Marshal.)

JAMES EDWARD GARDNER, Sworn

DIRECT EXAMINATION

Q (By Mr. Cook) Would you speak into the microphone as much
as you can, Mr. Gardner, so everyone can hear you. You
may have to lean forward a little. State your full name
again.

A. James Edward Gardner.

Q How old are you, Mr. Gardner?

A. Thirty-six years old.

Q Are you a federal prisoner now?

A. Yes, I am.

Q Can you tell me what you are serving time for now?

A. Bank robbery.

Q Are you also presently convicted of any other crimes at
the present time?

A. Yes.

Q What is that?

A. Murder.

Q And, does that conviction have a degree?

A. Yes, it does, second degree.

Q Second degree?

A. Yes.

Q Do those cover the convictions you are now serving time for?

A. Yes.

Q Do you have a criminal record that dates back into the past as well?

A. Yes.

Q Without enumerating perhaps each item, can you tell me how far your criminal record dates back?

A. 1960, I believe.

Q And, just in summary, can you tell me briefly what that is?

A. You want me to itemize the crimes?

Q As best you can.

A. Assault and robbery, breaking and entering, and burglary tools.

Q Burglary tools?

A. Yes.

Q Again, can you move closer to the mike and speak into it. Now, have you known in the past a person by the name of Donald Brant?

A. Yes.

Q How long have you known him?

A. Since 1961.

Vermont here?

A. Yes.

Q Right in this very building?

A. Yes.

Q And, you have agreed to give your testimony freely and truthfully in this court?

A. Yes.

Q And, is it true that the federal government has agreed not to prosecute you for your involvement in this burglary in Burlington, Vermont, and the conspiracy involved if you, in fact, cooperated and told the truth about that burglary?

A. Yes.

Q I am sure I said "burglary," and I should say robbery.

A. Yes.

Q Once again, you have agreed to tell the truth about that bank robbery?

A. Yes.

Q And, the federal government agreed not to prosecute you for it if, in fact, you do tell the truth about the bank robbery on April 11, 1974 and the conspiracy that led up to it?

A. Yes.

Q Are you here to tell the truth today?

A. Yes.

Q Now you say you did testify before the grand jury?

or both of you?

A. Both.

Q You had known them previously?

A. Yes.

Q And had Brant, to your knowledge, known them previously?

A. Yes.

Q Now when were you aware that Bishop became involved in the plan?

A. Late November or early December of 1973.

Q How did you happen to know he was involved in the plan?

A. I came up to visit Brant, and we discussed this bank robbery.

Q Where did you come from, at that time?

A. Manchester, New Hampshire.

Q And, did there come a time when you met Bishop up here as well?

A. Yes.

Q Where did you meet him?

A. On Linden Terrace.

Q When you say "Linden Terrace," whose house was that?

A. Brant's.

Q And, did there come a time while--well, you tell me about when that time was that you met Bishop up here in connection with the planning of that bank robbery.

A. Yes, early November--early December or late November.

A. In December.

Q Now, did there come a time when the four of you attempted to carry forth that agreement?

A. Yes.

Q Do you remember the date?

A. Not exactly, no. It was just before Christmas.

Q Just before Christmas?

A. Yes.

Q And, do you remember what day of the week it was?

A. It was on a Thursday.

Q Now, can you tell me how did you get here? You were living either in New Hampshire or Cambridge, I think you said.

Did you come up for it especially?

A. Yes.

Q Specifically?

A. Yes.

Q Did anybody come with you?

A. Yes.

Q Who came with you?

A. William Brady.

Q And, from what area had both of you come to Linden Terrace?

A. William Brady came from Boston, and I came from Manchester, New Hampshire.

Q Can you actually recall coming up for it? You said, "just before Christmas". Can you recall coming up with Brady?

A. The following week. Well, the week prior to the bank robbery.

Q Now, Mr. Gardner, I want to go to another area and answer this question "yes" or "no," if you would please. Did you ever engage in another bank---

MR. BRYAN. May we approach the bench?

THE COURT. Yes, you may approach the bench.

(At the bench)

MR. BRYAN. I take it counsel for the Government is getting into the New Hampshire case, is that right?

MR. COOK. Correct.

MR. BRYAN. I would like to renew my objections for our protection.

THE COURT. We'll note your continuing objection to this line of inquiry, without, of course, objections to specific questions. We urge you to make them.

MR. BRYAN. Let me think a minute. Well, we have it on the record. Okay.

(End of discussion at the bench.)

Q (By Mr. Cook) Mr. Gardner, did you ever commit another bank robbery which occurred on October 4, 1973 in Manchester, New Hampshire involving the Bank of New Hampshire? Can you answer that question "yes" or "no"?

A. Yes.

Q Can you tell me the names, if there were others, of the

THE COURT. Then I think I would let you ask the question in the form of a statement.

MR. BRYAN. I may have mis-spoke myself by using the word "testimony".

THE COURT. I think that is proper as long as it doesn't refer to his testimony.

MR. GRAY. That was our only objection.

(End of discussion at the bench.)

Q (By Mr. Bryan) Mr. Gardner, it is getting late in the day, and I want to ask you again, so we know where to leave it, do you recall certain police officers coming to talk with you?

A. Yes.

Q I just simply ask you, did you tell them that you would do a 180 degree turn and would become an informant if you were afforded the guarantee of spending time with your girl friend?

A. I don't recall that.

THE COURT. All right, ladies and gentlemen, we'll take our evening recess at this time. We will resume at 9:30 in the morning, and once again, I want to caution you not to discuss this case with anybody, your family or any individuals. I don't want you to discuss it between yourselves. I want to particularly emphasize I don't want you to read anything about this case, and

JAMES S. GOULDING, Sworn

DIRECT EXAMINATION

Q (By Mr. Bryan) Would you give us your full name, sir, for the record?

A. James S. Goulding.

Q Where do you reside?

A. At the Adult Correctional Institution in Cranston, Rhode Island.

Q I hope you don't live there.

A. Yes, I do.

Q But not with a lot of people who live there.

A. No.

Q What is your position there?

A. I am in charge of the records and identification of that institution.

Q How long have you been so?

A. Fifteen years.

Q And, do you have some document before you?

A. Yes, I do.

Q What are they, just tell us briefly what they are.

A. The records of an inmate at the Adult Correctional Institution.

Q And, you say those are your records kept in the ordinary course of business at that institution?

A. Yes, they are.

A. The bookkeeping number we assign to the commitment paper on an account for them.

Q Is that this paper here? (Indicating)

A. No, this is 4945, December 3rd.

Q Go ahead.

A. The paper is passed through various offices and the numbers are assigned so they won't get lost. The next entry is December 6th.

Q Just finish it out.

A. "December 6th, Commitment 49495 from the Kent Superior Court, remanded on original commitment."

Q What does "remanded" mean as it appears at the end of the entry there?

A. Means sent back to A.C.I.

Q And, as you look down through there, any records of escapes or any instances when the subject was not in custody with personnel at A.C.I.?

A. No, there aren't.

Q That continues to date, that record?

A. That continues to, well, I left yesterday with it, yes.

Q It doesn't include today?

A. No.

Q You don't know what happened today?

A. I don't know what happens today.

MR. BRYAN. I offer Defendant's "D" in connec-

A. I would say there is a mistake somewhere, yes.

Q Pretty serious mistake?

A. No.

Q No?

A. No. Mr. Bishop isn't on trial.

Q But Mr. Brant is?

A. Yes, he is, and he is also guilty.

MR. BRYAN. I ask that be stricken.

THE COURT. Yes, we'll strike the last part of that answer, and we'll take our noon recess at this time, ladies and gentlemen. Please don't discuss the case with anybody or read anything about it, or listen to it, and we'll resume at 1:30.

(Court recessed from 12:00 - 1:30 p.m.)

(In the courtroom without the jury.)

THE COURT. Mr. Bryan, anything you wish to bring to the attention of the Court at this time?

MR. BRYAN. Yes. My client would like to say a word or two, if this is all right with the Court, concerning this morning's proceedings. Would the Court indulge him?

THE COURT. Mr. Bryan, your client is represented by you, and I think you are perfectly competent to represent his interests in this matter.

MR. BRYAN. This is a different separate pro-

into any particular trial, and I think you should leave it up to him. We let you speak on two different occasions, but I think it is inappropriate, and at the appropriate time I am sure your counsel will make any motions you feel should be made in your behalf, and we'll see you have ample opportunity to consult with him, which you have had up to now.

MR. BRANT. Thank you, your Honor.

MR. BRYAN. Thank you, your Honor.

THE COURT. Are you ready to proceed? I assume the United States Attorney doesn't wish to add anything.

MR. COOK. We have nothing to add, your Honor.

THE COURT. Then bring in Mr. Gardner and then the jury.

(Mr. Gardner was brought into the courtroom by the Marshal and resumed the stand and the jury entered the courtroom at 1:35 p.m.)

THE COURT. Mr. Bryan.

MR. BRYAN. Thank you very much, your Honor.

CROSS EXAMINATION CONTINUED

Q (By Mr. Bryan) Mr. Gardner, I presume now you still maintain that Freddie Bishop was with you on December 20, 1973, performed certain acts which resulted in an abortive attempt to rob the Chittenden Trust Company?

A. I feel he was.

Q And, you can't give me any explanation between the variance

and proof between Mr. Goulding's records and your own memory?

A. No.

Q And, this Freddie Bishop is the same Freddie Bishop who now resides down in Cranston, Rhode Island and against whom you testified in Rhode Island in November of last year?

A. Yes.

Q And, as far as you know, it could not have been any other date than December 20, 1973 when that abortive attempt at robbing the Chittenden Trust took place?

A. No, I didn't say that. I said from the beginning, if you read the testimony, I was never sure of the date.

Q It wouldn't be off by more than two or three days? It was the Thursday before Christmas, in any event?

A. I am not positive of that, no.

Q Tell us what frame of time within which this incident had to take place.

A. I said it was around the end of the year some time.

Q Your testimony stands it was around the end of the year?

A. That is correct.

Q It certainly was not prior to the 4th day of December, 1973.

A. I don't know, I can't say that.

Q You can't say that?

A. No.

Q But your best recollection is what?

A. Is that it happened toward the end of the year. I

345 never indicated that I knew the exact date of it. The date was introduced by you people, not by me.

Q Who is "you people"?

A. The Government, and you have been using it and have adopted it as a specific date, and I never said a specific date.

Q Well, do you know whether it was December at all?

A. No, I don't.

Q You think it could be as early as October?

A. No, I would say it was after October.

Q Was it after November?

A. It could be the end of November.

Q How would you leave your testimony here?

A. Pardon me?

Q How would you leave your testimony?

A. I was never sure of the date. I never said a specific date on that particular run.

Q But you do remember all the details of how it took place, however, right?

A. Yes.

Q What kind of car was used that day?

A. I believe it was a Ford LTD.

Q From the parking lot down at the G.E. Plant, the one off Pine Street, is that where you stole it?

A. Yes.

you to step into the jury room for a very short while please.

(The jury left the courtroom at 1:45 p.m.)

THE COURT. Mr. Gardner, I have asked the jury to retire to the jury room in view of your statement today, and also your statement yesterday that you do not have to answer questions involving Joyce Newman, and it appears to the Court that these are perfectly legitimate questions to be asked by counsel for the defendant on cross examination. I don't want to rule on whether or not you have to answer those questions without asking you at this time on what basis you consider that you do not have to answer those questions?

MR. GARDNER. Because if he is trying to find out where she is, and if he can find out where she is, he will have her killed. He had his own wife shot. This guy is an animal.

THE COURT. If it is a question of the bodily harm of Joyce Newman, that is one thing, but anything that may have happened in the past involving Miss or Mrs. Newman, I don't see any way her safety could be jeopardized in the future.

MR. GARDNER. She has nothing to do with this, or any of these cases.

THE COURT. There is an indication in the case there was, at least at one time, a promise involving you and Joyce Newman, and that if you gave certain testimony that perhaps the two of you could get together and spend some time

Mr. Bryan showed us a transcript which he wishes to use to ask the questions of the witness, and we have no objection to him doing so. We can't, at this time, stipulate to it simply because we don't know; it may be perfectly accurate, we don't know at this time, but we have no objection to Mr. Bryan using it at this point, even though it isn't a certified copy.

MR. BRYAN. I told Mr. Gray I would verify that.
THE COURT. All right.

CHIEF DEPUTY CLERK LAFAYETTE. Defendant's "K" for identification, copy of transcript.

Q (By Mr. Bryan) Mr. Gardner, I show you Defendant's "K" for identification, which for the record I would state to be your testimony in the case of "State of Rhode Island versus Alfred J. Bishop," heard before Mr. Justice Shea, November 27, 1974. Do you see the face sheet on that exhibit?
(Shown to the witness)

A. Yes.

Q Does that appear to be the case you testified in, as far as you can recall?

A. Yes.

Q I would like to go through with you, on a question and answer basis, the testimony. I will read the question and you read the answer on just about a couple pages, and I want to ask you whether or not each of the questions you

Q "Question: So you saw him twenty-five times between October and November?" Answer was, "Possibly twenty-five times, not exactly twenty-five times." Is that your answer?
A. Yes.

Q "Question: All right, and I will include the first, like those three days. No, I won't. The last time you saw Alfred Bishop was the Friday before December 3rd which according to my calculations is November 29, 1973?" Your answer was, "Yes," is that correct?

A. Yes. Now my answer is "Approximately, yes." You are up here? (Indicating)

Q Yes.

A. Yes. My answer is "Yes," to that question.

Q And, that is what you testified to back in November at this trial, is that correct?

A. That is correct.

Q On Line 446, the question "How many times did you see Freddie Bishop in Burlington, Vermont during November of 1973." and your answer, "During November"?

A. Yes.

Q "Question: Yes." Your answer is "It is hard to estimate. I might have seen him, you know I used to go there every weekend and some times during the week." That was your answer?

A. That was my answer.

THE COURT. No, we'll overrule your objection.

Q (By Mr. Cook) Will you answer please?

A. Are you talking about just this bank, or other banks?

Q No, any time in the recent past.

MR. BRYAN. I particularly object, your Honor.

MR. COOK. I will connect it up, your Honor.

A. It happened a few other times; five or six other times.

Q (By Mr. Cook) Would it be fair to say that you really focus your attention on something that was aborted? Is that very meaningful to you?

MR. BRYAN. Object to the form of the question.

THE COURT. Sustained.

Q (By Mr. Cook) Maybe I could ask you this. You know it has been reported to you that Mr. Bishop was arrested, I think, on December 3rd or 4th, 1973? That has been the testimony here, and you have heard that, have you not?

A. Yes.

Q Knowing that, is there any possibility at all that you could be mistaken about Bishop being with you on December 20th?

A. I don't feel there is, but there is a possibility that there could be.

Q In your own mind, was Bishop with you?

A. I feel he was, yes.

Q Was Bishop with you during the dry run?

car was stolen?

A. I am not sure of the date. It was several days before Christmas.

Q Are you certain it was in December of 1973?

A. Yes, sir.

Q Would you characterize it as early, or late in the month?

A. It was toward the latter part of the month, several days before Christmas.

Q Now would you tell us please what time you arrived at work that day?

A. Approximately 7:00 or 7:30 in the morning.

Q And, did you have a spot assigned to you in the parking lot?

A. No, I didn't.

Q Did you usually park in the same place?

A. Yes.

Q And, did you leave the keys in the car?

A. No, I did not.

Q Did there come a time that day when you discovered your car was missing?

A. Yes, it was approximately twelve o'clock that afternoon.

Q How did you happen to discover it at twelve o'clock that day?

A. I had a half day's vacation left which I was going to take before the holidays, and I went out to the parking lot and my car was not there.

Q Did you report it missing, ultimately?

Q Or interviewed by the Burlington police?

A. Yes.

Q So they got a formal report of your version of what happened?

A. Yes, sir.

MR. BRYAN. That is all I have.

THE COURT. Anything further, Mr. Gray?

MR. GRAY. No further questions, your Honor.

THE COURT. Thank you, Mr. Archacki, you may step down. Ladies and Gentlemen, we'll take our evening recess at this time and resume at the usual time 9:30 in the morning. Please don't discuss the case among yourselves or anybody else, and please don't read anything about it or hear anything about it. I will stay on the bench, so see you in the morning at 9:30.

(The Jury left the courtroom at 4:30 p.m.)

THE COURT. Anything counsel wishes to bring to the attention of the Court at this time?

MR. GRAY. No thank you, your Honor.

MR. BRYAN. May I have a moment, your Honor?

THE COURT. Yes.

MR. BRYAN. I don't believe so, your Honor.

Thank you.

THE COURT. We'll stand in recess.

(Court recessed at 4:30 p.m.)

Q Now, does it also state, does it also provide by the owner here, the date of purchase?

A. Yes, sir, it does.

Q What is that date of purchase?

A. March 25, 1974.

Q When I say "date of purchase," who would that be from, whom to whom?

A. That would have been Kevin R. Dailey purchased this vehicle from Robert L. Nelson on 3/25/74.

Q And, is there a speedometer reading there?

A. Yes, there is.

Q And, does it state the type of vehicle it was?

A. Yes, sir, it does.

Q So the purchase date from Nelson to Dailey is March 25, 1974 on this document?

A. Yes, sir.

Q When was the insurance effective on this document?

A. March 28, 1974.

Q That is three days later?

A. Yes, sir.

Q And, what insurance company provided that insurance?

A. Travelers Indemnity Company.

Q And, what date was that insurance effective?

A. March 28th of 1974, sir.

Q Was there any sort of tax paid, according to this document?

YVETTE BOISVERT, Sworn

DIRECT EXAMINATION

Q (By Mr. Cook) Would you pronounce your name please?

A. Mrs. Boisvert; Yvette Boisvert.

Q Mrs. Boisvert, where do you live?

A. 131 Pearl Street, Manchester, New Hampshire.

Q How Long have you lived there?

A. Eleven years.

Q And, did you a year ago, say in 1973, know the person who lived next to you at 129 Pearl Street?

A. I knew him by the first name, Roger.

MR. BRYAN. Could I interrupt. I would like to approach the bench for a second.

(At the bench)

MR. BRYAN. Again, your Honor, we would like to make sure we preserve our objection as to any New Hampshire evidence involving anything to do with my client in New Hampshire and involvement in any bank robbery in New Hampshire on all the grounds stated previously--prejudice and so forth.

THE COURT. All right, we'll note your objection.

(End of discussion at the bench.)

Q (By Mr. Cook) Mrs. Boisvert, can you remember, did you say Roger lived there during 1973?

A. Yes.

it for the record. If I am mistaken, I will stand corrected.

THE COURT. Counsel get together during the recess which we are about to take and clear this up between you. If there is a problem, we'll listen to you further, Mr. Bryan.

MR. BRYAN. Thank you.

(End of discussion at the bench.)

THE COURT. All right, Mrs. Boisvert, you may step down.

MRS. BOISVERT. Thank you.

THE COURT. Ladies and gentlemen, we'll take our noon recess and please remember the usual admonition about discussing the case.

MR. COOK. This lady had a death in the family recently and would like to be excused. I assume she doesn't have to be held over.

THE COURT. I am perfectly willing. Do you know any reason you want her to stay?

MR. BRYAN. If she could stay around another ten minutes.

THE COURT. We'll stand in recess.

(The Court recessed from 12:00 - 1:30 p.m.)

(In the Courtroom without the Jury.)

A. That is correct, we wouldn't do that. All I wanted from him was the truth.

Q All you wanted from him was the truth?

A. Yes, sir.

MR. GRAY. Nothing further, your Honor.

MR. BRYAN. Nothing further, your Honor.

THE COURT. All right, Mr. Johnson, you may step down.

MR. JOHNSON. Thank you, your Honor.

(Mr. Johnson left the courtroom.)

THE COURT. Do you have anything further at this time, Mr. Bryan?

MR. BRYAN. No, your Honor.

THE COURT. All right, Ladies and Gentlemen, we'll let you start your weekend a little bit early and we will reconvene Tuesday morning at whatever date that is, the 27th, I guess, at 9:30 a.m. and please remember this is quite important at this time. You have heard a lot of evidence in this case and it is a relatively long weekend in between and I don't want you to discuss the case with any one, read about it, or listen about it, and we'll see you on Tuesday at 9:30 a.m. and have a pleasant weekend. I will stay on the bench, so see you then.

(The Jury left the courtroom at 3:50 p.m.)

THE COURT. I merely take this opportunity to

find out is there anything counsel wishes to bring up at this time?

MR. GRAY. No, thank you, your Honor.

MR. BRYAN. Nothing further at this time, your Honor.

THE COURT. Again, I will ask counsel and the reporter if they would be here maybe fifteen minutes early on Tuesday in case anything comes up, and I also wish counsel, and the court reporter, and the clerk a good weekend.

(Court recessed at 3:51 p.m.)

(May 27, 1975; 9:50 a.m. in the courtroom without the Jury.)

THE COURT. Mr. Bryan.

MR. BRYAN. Thank you, your Honor. At this time, I would like to move the Court poll the Jury, either in the presence of counsel or in the presence of the Court alone, on whether some of the events over the weekend publicized on television and in the papers, specifically the attempted break attempted departure on the part of Mr. Brant is known to any of the jurors.

THE COURT. What do you mean the "attempted departure of Mr. Brant"?

MR. BRYAN. He is here today. I take it he didn't make it, and I know it has been reported in the papers.

THE COURT. The Court read the newspaper and

556 it said that Mr. Brant, on Sunday evening, overpowered the guard and attempted to leave from the Burlington Correctional Center, was apprehended at the corner of College and South Winooski Avenue, which the Court takes judicial notice is about a block from the correctional center, by a Burlington police officer and returned to the correctional center. Why do you make this request?

MR. BRYAN. Your Honor, I feel if the Jury has found out something about it, I think it is quite damaging to the case and also affects counsel's posture.

THE COURT. What would you propose to do about it, Mr. Bryan?

MR. BRYAN. I don't know, your Honor. If every juror read it, I presume it might be a motion for a mistrial might be in order; if one juror read it, I really don't know what my position would be, but at least I think this Jury should be cautioned it is not part of the evidence in the case and to disregard anything he or she read along those lines.

THE COURT. We have a large proportionate of jurors from outside the immediate area, but they are within 35 or 40 miles. I think should we start to poll the Jury it will just focus undue attention on this incident.

MR. BRYAN. If I may make a report, I spoke with Leonard Wing this morning, and he heard it in Rutland, and he heard it around the state. I ask the Court not ask

specifically on the question, but ask the Jury if he or she discussed anything about the case over the weekend, heard anything about it, heard anything to do with the case, and if the answer is negative, let the matter drop there.

THE COURT. Let me hear from the Government.

MR. GRAY. Your Honor, neither Mr. Cook or I are familiar with the publicity which resulted from this event, but I don't understand there is any claim that this case, the fact that this case in any way was reported either in the newspapers or on television and radio accounts as such. I don't believe there is anything from the publicity which would color the jurors reaction in this particular case. Now to the extent that the Jury is now informed and has information that Mr. Brant attempted, allegedly attempted a jail break over the weekend, I would point out it appears that was generated and the publicity connected with it was generated by the defendant himself, and as such, we oppose any motion for a mistrial or to excuse a juror. Now the problem with the poll itself is the problem the Court has already focused on, and that is in asking the questions, the Court runs the risk of focusing too much attention on this event, and we would suggest perhaps the best course of action, since it didn't relate to this case itself, would be simply to let the matter lie and to proceed as if nothing happened in the hope that we would ride over this problem as smoothly as possible. If the Court were to inquire

of the Jury, it would tend to increase the tension and increase the publicity, and we also think if the answer to the question is, "Yes, I have read about that jail break," that a mistrial is not appropriate. Therefore, a poll of the Jury would not accomplish any appropriate purpose.

THE COURT. Mr. Bryan, I would not be inclined to grant a mistrial anyway because of the events that were initiated by the defendant and resulted from his activities, and I think if I was to poll the Jury on this specific incident that it is likely to focus undue attention on this incident, or at least the Jury would be aware this is their reason for any inquiry, and I would wish to poll them individually and out of the presence of each other, and I can't see any useful purpose would be gathered by so proceeding, and so I am going to deny your request. This is a somewhat unusual situation; certainly one we never encountered. I think the only way such a situation might be held not to come to pass would be if the Jury had been sequestered. However, it has been my experience and it is my opinion, and that is shared by many federal judges, the advantages of not sequestering the Jury much outweigh the disadvantages of sequestering them. In other words, it is not my practice to sequester the Jury, and I think it is better practice not to sequester them.

MR. BRYAN. I didn't understand sequestering was an issue.

THE COURT. I realize it isn't, but if they were sequestered and all television and newspapers taken away from them, they would not have heard.

MR. GRAY. Your Honor, just so the record will reflect the scope of the publicity, I might point out that neither Mr. Cook or I were aware of this attempted break until this morning, and we do both reside some distance from this court house, but it is entirely conceivable the jurors are not aware of it. I would point out one fact, or make a suggestion to the Court, if I may, on behalf of the Government. I know it is the Court's usual practice when the Jury is excused at the end of the day, and often in the morning when they return, they are not to consider any publicity or read anything. Now maybe it would be appropriate for the Court to remind the Jury at some point today, of course the only evidence they are to consider in any respect is the evidence adduced here in trial and which is before them in the open court.

THE COURT. We do not intend to poll the Jury this morning on that particular issue, and accordingly, we'll not do so. We'll give the Jury our usual cautionary instructions. I saw nothing on television, probably because I wasn't looking, and I heard nothing on the radio because I wasn't listening. I don't think there is any publicity with reference to this trial in the BURLINGTON FREE PRESS except on the very first day, and this was when the case was started,

stricken from the record and not be for consideration by the Jury. We feel that there is no showing that the New Hampshire robbery has anything to do with the Vermont robbery. The evidence is simply prejudicial and has no probative value. It does not tend to corroborate Gardner's testimony and feel it should be stricken from the case, and in that connection we renew our motion for a mistrial as we have before put forth before the Court, based upon the prejudicial nature of the testimony in question. That is our second motion.

THE COURT. Mr. Cook or Mr. Gray.

MR. GRAY. We take the same position set forth previously, both in open court and in our memorandum of law with respect to the admissibility of similar acts.

MR. BRYAN. That is all, your Honor, on that motion.

THE COURT. Your motion is denied.

MR. BRYAN. Thirdly, your Honor, my client has a motion he would like me to put forth before the Court, that Mr. Gardner, on the basis of his testimony and his admitted testimony not only in this court but in the court in Rhode Island, and in the prior proceeding, has admittedly made false statements under oath and my client would like me to move the Court he be cited for perjury.

THE COURT. Mr. Gray or Mr. Cook.

MR. GRAY. Your Honor, of course, as the Court

theft?

A. Yes, there is. I have it with me here.

Q Would you look in there and see if there is mention of damage to the vehicle in question and tell us what that damage is?

A. You wish me to read from the report?

Q Tell us what the damage was. It may be where the vehicle was found.

A. They found the ignition had been pulled out from the steering column. No other damage to the vehicle, as far as I could see.

MR. BRYAN. Thank you.

MR. GRAY. We have no questions. Thank you,

Captain.

MR. BRYAN. Thank you for coming, Captain.

THE COURT. Anything further at this time, Mr.

Bryan?

MR. BRYAN. Not at this time, your Honor.

THE COURT. We'll take our noon recess and resume at 1:30. Please remember the admonition not to discuss the case among yourselves or with anybody else, or listen or read anything about it, and we'll resume at 1:30 this afternoon.

(Court recessed from 11:50 a.m. - 1:35 p.m.)

THE COURT. Mr. Bryan.

and I want you to think once again this person is a wholly worthless individual. He is no angel. He is utterly worthless, but unfortunately for the Government--at least in a bank robbery--we don't have the bank president down there and people committing robberies without masks. We have to use the witnesses that are available. Mr. Gardner, in this instance, was the witness that was available, but regardless of all his worthlessness, I say to you that it is possible for a person to have some redeeming value in court and to be truthful, and I suggest you could find that Mr. Gardner was truthful throughout his testimony; certainly throughout all his testimony with the exception of that Bishop incident in December, and again, I ask you to look at that very closely, and so I have talked for twelve minutes here about Mr. Gardner. I am going to say once again, I am sure Mr. Bryan will read to you all of these convictions; he will preface to you the Government's promises.

Let me focus once again on one Government promise before I leave. There was some mention made about a 180 degree turn. You will recall Mr. Bryan asking Mr. Gardner that question initially, and I think the answer was somewhat vague, but I think you will definitely decide it wasn't a 180 degree turn of position from untruth to truth, and from truth to untruth. It was Mr. Gardner's change in position from, you might say, non-cooperation to cooperation; from not agreeing to testifying to testifying. That is what that 180 degree turn

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

VS

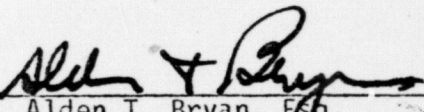
DONALD RICHARD BRANT

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CRIMINAL NO. 75-16

CERTIFICATE OF SERVICE

I, Alden T. Bryan, Esq., a member of the firm of Hoff, Curtis, Bryan, Quinn & Jenkins, 192 College Street, Burlington, Vermont, attorneys for defendant-appellant in the above matter, do certify and say that on the 25th day of November, 1975, I did serve a copy of the defendant's Brief and Appendix upon the Honorable George W. F. Cook, U.S. Attorney, Federal Building, Rutland, Vermont 05701, by placing the same in an envelope properly addressed and prepaid and by placing said envelope in the United States Mail for delivery.


Alden T. Bryan, Esq.